



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt resolution extending contract for the concession operation at the Adult Softball Complex and Chapman Field to Out of Bounds Concessions of Stockton, CA, for the remainder of the 2006 season (for the period May 1, 2006, to December 31, 2006)

**MEETING DATE:** June 7, 2006

**PREPARED BY:** Parks and Recreation Director

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**RECOMMENDED ACTION:** That the City Council adopts a resolution awarding a contract for the concession operation at the Adult Softball Complex and Chapman Field to Out of Bounds Concessions of Stockton, CA, for the 2006 season.

**BACKGROUND INFORMATION:** The concession building at the Softball Complex, 401 N. Stockton St., is in disrepair. The building's deteriorated condition is due, in part, to age, water leaks from the roof, deferred maintenance, damage from frequent attempts at break-ins, and unsolvable budget constraints.

The San Joaquin County Health Department has approved the location for food service. Concessions are open for high school and adult games, as well as weekend tournaments. Out of Bounds Concessions has been the concession operator at Lodi's adult softball facilities since 2001 and wishes to continue in this role. The previous agreement with the concessionaire included a five-year term; but that contract expired in December of 2005. Due to the poor condition of the concession building and the uncertainty of its ultimate repair, we are not recommending another five-year lease term. Instead, we are recommending the attached contract for the remainder of the 2006 season, with payments of twelve percent (12%) of gross sales to the City. The length of the contract shall be from May 1, 2006, through December 31, 2006.

Each of the agreement participants, Lessor ("City") and Lessee ("Concessionaire") have responsibilities as defined in the contract. The concessionaire, though, is expected to obtain any and all permits and licenses which may be required by law or ordinance in conducting the concessions, pay all applicable taxes and assessments relevant to business operations, and pay a percentage (12%) of gross receipts to the City.

**FISCAL IMPACT:** Estimated revenue to the City will be approximately \$4,500 for this season.

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APPROVED:

A handwritten signature in black ink, appearing to read "Blair King".


Blair King, City Manager

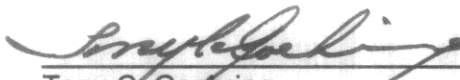
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**FUNDING AVAILABLE:** None required

  
Ruby Paiste, Interim Finance Director

  
Tony Q. Goehring  
Parks and Recreation Director 

Prepared by Michael Reese, Recreation Supervisor

TCGMR:tl

cc: City Attorney

## AGREEMENT

### BETWEEN CITY OF LODI AND OUT OF PLAY CONCESSIONS

#### Concession Operations at Armory Park and Lodi Softball Complex

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006 by and between the CITY OF LODI ("City"), and OUT OF PLAY CONCESSIONS ("Concessionaire"):

#### W I T N E S S E T H:

Concessionaire agrees to operate concession stands at the parks described below in strict compliance with San Joaquin County Health Department standards and requirements for concession operations, and under the following terms and conditions:

#### Area to be Serviced:

Armory Park, 333 North Washington Street, and Lodi Softball Complex, 401 North Stockton Street, Lodi, CA.

City does hereby grant to Concessionaire the sole and exclusive right/license to vend food, drinks, picnic supplies, souvenirs, and other concession items as approved by the City of Lodi, at the concession stands at the above-described parks, beginning May 1, 2006 and ending December 31, 2006.

#### The City Will Provide:

1. Enclosed concession stands with some limited city-owned equipment, which Concessionaire will be expected to service and maintain at Concessionaire's sole cost and expense. (Improvements to building and/or facilities, proposed by Concessionaire, are subject to City approval. Cost of installation shall be borne by Concessionaire, and all improvements shall become property of the City upon termination of this agreement).
2. Water, sanitary sewer, gas, electricity, and garbage receptacles outside the concession buildings shall be provided by the City;
3. Maintenance of the general property of the concession buildings, unless abuse and lack of general care is apparent, at which time the cost and expenditures of maintenance shall be borne by the Concessionaire.

#### Concession Operation Conditions:

1. The length of the contract shall be from May 1, 2006, and ending at midnight on December 31, 2006.
2. Concessionaire agrees to maintain in full force during the term hereof, a policy of general liability insurance which contains an Additional Named Insured Endorsement naming the City of Lodi, its officers, agents, and employees as Additional Insureds, and under which the insurer agrees to indemnify and hold the City of Lodi harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal or bodily injuries, including death, sustained

in accidents occurring in or about the demised premises; where such accident, damage, or injury, including death, results or is claimed to have resulted, from any act or omission on the part of Concessionaire or Concessionaire's agents or employees in the implementation of this Agreement. The minimum limits of such insurance shall be \$1,000,000 general aggregate. In addition to the Additionally Named Insured Endorsement on Concessionaire's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers, agents, and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said bodily injury and property damage insurance containing the above-stated required endorsement shall be delivered to the Risk Manager after the issuance of said policy, with satisfactory evidence that each carrier is required to give the City of Lodi at least 30 days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement. The insurance certificate must state on its face or as an endorsement, the name of the Concession that it is insuring. If there has been no such delivery within forty-eight (48) hours prior to the commencement of this Agreement, this Agreement shall be null and void. All requirements herein provided shall appear either in the body of the insurance policy or as endorsements and shall specifically bind the insurance carrier. This paragraph and all other provisions of this Agreement shall apply and be construed as applying to any subtenant of Concessionaire, in the event any such subtenant is allowed under the provisions of paragraph 13 of this agreement.

Notwithstanding other provisions contained in this Agreement, the City Manager is granted the right to immediately terminate the Agreement upon failure on the part of the Concessionaire to keep in full force and effect during the entire term of the agreement, the insurance as set forth in this section.

3. Concessionaire shall, prior to opening for business each year of said Agreement (by April 1 of each year), furnish a "Products and Price Schedule" and shall follow the products and price schedule as negotiated between the City Manager or his representative and Concessionaire.
4. Concessionaire shall provide all equipment and products to operate said concessions. (The City and Concessionaire shall furnish each other with a list of their provided equipment, which lists shall be updated annually).
5. Concessionaire shall pay 12% of gross receipts from Armory Park proceeds, and 12% from the Lodi Softball Complex proceeds, excluding sales taxes to the City of Lodi, which payments shall be due on the tenth (10th) calendar day of every month for sales of the previous month. If said percentage has not been paid by the due dates, there shall be a penalty of five percent (5%) per day for any amounts not paid, and owing to the City. The Concessionaire shall keep accurate records and books of accounts of all purchases and sales, and does hereby give to the City or its authorized agents, the right to examine and audit said books at any time City desires. The Concessionaire shall complete monthly records on forms provided by the City, and these reports shall

accompany gross receipts payments, provided to the City by the tenth (10th) calendar day of each month while concessions are in operation.

In event of loss or damage of foodstuffs or product that is owned by the Concessionaire due to the concession building becoming unusable, or damage from rain or other weather conditions, or mechanical failure of City owned equipment, the Concessionaire may deduct the loss from the net receipts for the month before making payment to the City.

6. The dates and times of operation shall be as follows:
  - A. Concessionaire shall operate from May 1<sup>st</sup> to November 15<sup>th</sup> at times commencing one-half hour before City and/or Lodi Unified School District events, and to the conclusion of the last scheduled game or event.
  - B. Saturday/Sunday tournaments or other non-City or Lodi Unified School District games or events, Concessionaire shall open one-half hour prior to the first scheduled game, and remain open until the conclusion of the last scheduled game or event.
7. Concessionaire agrees to obtain at his/her own expense, any and all permits and licenses which may be required by law or ordinance in conducting the concessions, and to pay any and all taxes and assessments which may be assessed against him or her for whatever purposes in the operation of said concessions.
8. Maintenance:

Concessionaire shall keep the concession stands and the immediate surrounding areas in clean and presentable condition at all times and follow the strictest of sanitary conditions, and any State and local ordinances applicable to the business to be conducted. Concessionaire shall be responsible for daily removal from the premises all packaging materials (cartons, boxes, cases) in which food and beverage items are packed. Concessionaire shall be responsible to give the City written notice of any maintenance problems.
9. The rights granted hereunder for concession sales at the identified parks, shall be exclusive to Concessionaire, save and except any special events or national or regional tournament conducted outside the normal course of operation of the above-described facilities, and of which the City Manager or his representative shall give concessionaire thirty (30) days advance notice.
10. Concessionaire is aware that a Possessory Interest Tax is or may be charged each year by the County Assessor for the use of the facilities and that payment of this tax is the responsibility of the vendor.
11. The Parks and Recreation Director reserves the right to approve or disapprove any employee or operator of said concession stand on a basis of such considerations as dress, general cleanliness, and working relationship with the public and staff, as needed to successfully vend food for day-to-day operations, tournaments or special events or activities. (The City will counsel and coordinate this action with Concessionaire manager).

All concession employees will be dressed in like uniforms, white or other light color as approved by the Parks and Recreation Director, and be identified, by name, as employees of Concessionaire. All concession employees shall wear appropriate head attire to meet San Joaquin County Health Department requirements, and shall be clean at all times.

12. The City reserves the right to enter upon the premises at any reasonable time to inspect the operation and equipment thereon, or for any other purpose.
13. Concessionaire shall not have the right to sell, mortgage, assign or sublet the contract/agreement or any part thereof without the prior written consent of the City Manager or his representative. A breach of this condition shall automatically terminate any contract or agreement between City and Concessionaire. (In the event that Concessionaire is unable to provide required concession products and/or services for special events, the City shall have the right to secure said services and/or food and beverage products, and to negotiate any and all agreements or contracts to provide said services and/or food and beverage products for sale to the public, and all proceeds therefrom shall be forfeited to the City. Said original Concessionaire shall have first right of refusal to participate in said negotiations).
14. The City reserves the right, during national tournaments or other special events, to permit the approved operation of additional concessions not in conflict with Concessionaire's normal product line of food and beverages. Rights to the sale or distribution of programs, photo packages, clothing souvenirs and advertisements of any kind or form for said tournaments or special events shall remain solely and exclusively the property of the City at all times prior to, during, and after said events.
15. Alcoholic Beverages:
  - a.) The sale of alcoholic beverages shall be limited to beer, selection of which shall include at least one premium brand, and shall be subject to approval of the City;
  - b.) The sale of alcoholic beverages shall be subject to all local, state, and federal laws, and Concessionaire shall bear full responsibility for knowledge of, and compliance with, such laws.
  - c.) Concessionaire agrees that no alcoholic beverages will be sold at any time during regional or national youth softball tournaments.
16. Staffing:

Armory Park:	Concessionaire shall provide a minimum staff of at least one (1) person at all times during all scheduled events;
Softball Complex:	Concessionaire shall provide a minimum staff of two (2) persons at all times during all high school games and all

weekday City League games, and three (3) persons during weekend games and all tournaments and special events.

Changes in minimum staffing levels may be renegotiated if City and Concessionaire agree that such changes will have no adverse effect on quality or level of service, or on quality of food served.

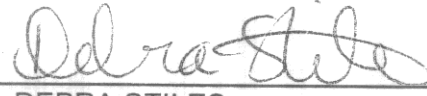
17. The Concessionaire shall be responsible for the security of the concession stands and any storage buildings assigned to his/her exclusive use, including but not limited to the installation of locks on doors or windows, or installation of an alarm system if it is deemed necessary, and Concessionaire shall be responsible for any acts of vandalism to Concessionaire's equipment and/or inventory.
18. At the conclusion or termination of any stated agreement or contract, Concessionaire shall surrender said concession premises in a condition as good as that in which they received same, less normal wear and tear. Damage to or mistreatment of the buildings or City equipment shall be the responsibility of the Concessionaire to repair, replace, or reimburse the City for the repairs or replacements. Concessionaire shall remove all of its personal property from the premises prior to said termination. If Concessionaire fails to so remove its personal property, City shall be entitled to remove and store said personal property at Concessionaire's expense.
19. The agreement/contract may be terminated by written agreement of either party hereto without cause upon thirty (30) days' written notice to the other party. Such notice shall be delivered to the City Manager's office, City Hall, 221 West Pine Street, Lodi, or to the Concessionaire at a premises which is subject to this agreement.
20. Concessionaire shall be required to provide to the City upon the signing of this agreement a Performance Bond in the amount of \$2,500.00.
21. If Concessionaire defaults in any of the terms contained herein, the Concessionaire's agreement to provide service as specified herein shall terminate upon failure of Concessionaire to correct the default within thirty (30) days of receiving written notice thereof from the City. Upon any termination thereof, Concessionaire agrees to quit and surrender possession peaceably and City shall have the right to remove Concessionaire and all others occupying through or under this agreement. Under such termination of agreement the Concessionaire's performance bond shall be forfeited to the City for payment of all outstanding debts owed by Concessionaire to the City, including monthly payment(s) and any and all reimbursements for repairs or replacement of the facilities.
22. In the event that either party brings an action under this Agreement for the breach or enforcement thereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs, whether or not such action is prosecuted to judgment.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands the day and year first hereinabove written.

CITY OF LODI, a municipal  
Corporation

CONCESSIONAIRE,  
OUT OF PLAY CONCESSIONS


By:   
BLAIR KING  
City Manager

By:   
DEBRA STILES  
2196 Piccardo Circle  
Stockton, California 95207

ATTEST:

  
SUSAN J. BLACKSTON, City Clerk

Approved as to Form:

  
D. STEPHEN SCHWABAUER  
City Attorney



RESOLUTION NO. 2006-103

A RESOLUTION OF THE LODI CITY COUNCIL  
AWARDING THE CONTRACT FOR  
CONCESSION OPERATIONS AT THE ADULT  
SOFTBALL COMPLEX AND CHAPMAN FIELD

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the contract for concession operations at the Adult Softball Complex and Chapman Field to Out of Bounds Concessions, of Stockton, California, for the period May 1, 2006 through December 31, 2006, for a return of 12% of gross sales from each concession operation to the City of Lodi.

Dated: June 7, 2006

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I hereby certify that Resolution No. 2006-103 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 7, 2006 by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson, and Mounce  
NOES: COUNCIL MEMBERS – None  
ABSENT: COUNCIL MEMBERS – Mayor Hitchcock  
ABSTAIN: COUNCIL MEMBERS – None

  
JENNIFER M. PERRIN  
Interim City Clerk